

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

PRODIGY FINANCE CM2017-1 DAC

Petitioner,

v.

PENHA CRISTINA BRAGA MARTINS,

Respondent.

No.

**PETITION TO CONFIRM  
FOREIGN ARBITRAL AWARD**

Petitioner, Prodigy Finance CM2017-1 DAC (“Petitioner” or “Prodigy”), by and through its undersigned attorneys, hereby petitions this Court for an Order: (a) confirming the final arbitration award, dated May 19, 2021 (“Final Award”) made in its favor against Penha Cristina Braga Martins (“Respondent” or “Martins”); (b) entering a judgment in Petitioner’s favor in the full amount of the award, plus the post-award interest specified therein, post-judgment interest pursuant to 28 U.S.C. § 1961, and the fees and costs of this petition; and (c) granting such other relief as the Court deems just and proper.

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**I. PARTIES, JURISDICTION AND VENUE**

1. Petitioner is a designated activity company limited by shares, incorporated under the laws of Ireland with registration number 604846, having its registered address at 2nd Floor, Block 5, Irish Life Centre, Abbey Street Lower, Dublin 1, D01 P767, Ireland.

2. Respondent is an individual who, upon information and belief, resides in Seattle, King County, Washington.

3. This Court has original jurisdiction over this action pursuant to 9 U.S.C. § 203. Here, the Final Award is governed by the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), a treaty in force in the United States. *See*, 9 U.S.C. § 201. Moreover, the New York Convention applies to the Final Award because it (and the original loan agreement) arise from a legal relationship that is commercial and involves foreign citizens (and foreign properties), and also involves performance abroad. *See* 9 U.S.C. § 202. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1).

**II. THE LOAN AGREEMENT AND ASSIGNMENT**

4. Prodigy Finance Limited, Petitioner’s predecessor-in-interest, and Martins entered into a loan agreement entitled “Fixed Sum Loan Agreement Regulated by the Consumer Credit Act of 1974” dated August 21, 2017 (“Prodigy-Martins Agreement”) pursuant to which Prodigy Finance Limited agreed to loan Martins a principal sum of \$101,544.70. *See*, Declaration in Support of Petition to Confirm Foreign Arbitral Award (“Decl. in Support”), Exhibit 2.

1           5. Pursuant to clause 9.4 of the Prodigy-Martins Agreement, Prodigy Finance  
 2 Limited was entitled to assign the Agreement to Petitioner. Clause 9.4 of the Loan Agreement  
 3 specifically provides that:

4           *“...After disbursement, we may unilaterally assign our rights and obligations under*  
 5 *this Agreement to a third party”*. See, Decl. in Support, Exhibit 2.  
 6

7           6. On or about August 25, 2017, Prodigy Finance Limited assigned all of its legal  
 8 and beneficial rights under the Prodigy-Martins Agreement to Petitioner. See, Decl. in Support,  
 9 Exhibit 3.

10           7. Clause 9.5 of the Prodigy-Martins Agreement stipulates the following:

11           *“Subject to applicable law, we may vary the terms of this Agreement at any time*  
 12 *for objectively justified business reasons. We will give you advance notice of any*  
 13 *such change in writing and your right to make early settlement at any time will*  
 14 *remain unaffected.”* See, Decl. in Support, Exhibit 2.  
 15

16           8. On October 31, 2019, Martins was provided with written notice of a variation of  
 17 the terms of the Prodigy-Martins Agreement. The notice clearly set out that the terms being varied  
 18 relate to the arbitration of disputes at Clause 10 of the Prodigy-Martins Agreement "Loan  
 19 Conditions." See, Decl. in Support, Exhibit 3. The Notice of Variations also stated that the  
 20 changes would come into effect from November 30, 2019, and that they were to Martin's benefit.  
 21 Martins was provided with a hyperlink in the notice to access her copy of the newly varied Loan  
 22 Agreement Loan Conditions. See, Decl. in Support, Exhibit 4.  
 23

24           9. Clause 10.1 of the varied term provides as follows:

25           *“This Agreement shall be governed by English law.”*

1           10.     Clause 10.2 of the Prodigy-Martins Agreement, as varied, provides that any  
2     dispute arising out of or in connection with the Agreement, would be determined in accordance  
3     with clause 10, subject to the content of clause 10.8. See, Decl. in Support, Exhibit 4.

4           11.     Clause 10.4 of the Prodigy-Martins Agreement, as varied, specifically stipulates  
5     that any dispute between the parties in respect of an amount between £5,000.00 and £200,000.00  
6     (or the foreign currency equivalent thereof) shall be referred to Chartered Institute of Arbitrators  
7     (the Business Arbitration Scheme) for resolution, with the number of arbitrators to be one, the  
8     language to be English and the place or seat of the arbitration to be London, England.  
9     Furthermore, any hearing may take place via video-link in order to avoid any unnecessary travel  
10    or related travel costs. See, Decl. in Support, Exhibit 4.

### 12                                   **III.     THE AGREEMENT TO ARBITRATE**

13           12.     As evidenced above, Petitioner and Respondent (collectively “the Parties”) agreed  
14     to arbitrate any dispute between the parties for an amount between £5,000.00 and £200,000.00  
15     (or the foreign currency equivalent thereof) and the Prodigy-Martins Agreement was to be  
16     governed by English law. See, Decl. in Support, Exhibit 4.

17           13.     Furthermore, the parties agreed that the dispute would be referred to the Chartered  
18     Institute of Arbitrators for resolution. See, Decl. in Support, Exhibit 4.

### 19                                   **IV.     THE DISPUTE**

20           14.     In January 2019, Martins defaulted on the Prodigy-Martins Agreement by failing  
21     to pay the monthly loan repayment amount. As a result, a Notice of Default was issued to  
22     Martins. See, Decl. in Support, Exhibit 5.

1           15.     On August 12, 2019, another Notice of Default was issued to Martins for her  
2 continued failure to pay the loan amount. See, Decl. in Support, Exhibit 6.

3           16.     On November 12, 2019, Martins still had not cured the arrears on the account. As  
4 a result, another letter was sent to Martins providing the outstanding amounts and indicating that  
5 Prodigy would invoke the arbitration provisions in the Prodigy-Martins Agreement. See, Decl.  
6 in Support, Exhibit 7.

7           17.     Finally, after Martin's continued failure to cure the arrears, a final notice was  
8 issued to Martin indicating that the Prodigy-Martins Agreement was terminated and that they  
9 would invoke the arbitration provisions without further notice. See, Decl. in Support, Exhibit 8.

#### 10                               **V.     THE ARBITRATION AND AWARD**

11           18.     After Martins' continued failure to cure, to make any payment whatsoever on the  
12 account or otherwise discuss alternative methods to resolve the pending dispute, Prodigy applied  
13 to the Chartered Institute of Arbitrators ("CIArb") for the appointment of an arbitrator in  
14 accordance with section 10 of the Prodigy-Martins Agreement, as varied. The dispute sought to  
15 be arbitrated involved an amount between £5,000 and £200,000, specifically £89,116.87 or  
16 \$123,575.19 after the account had been terminated.

17           19.     The application made by Petitioner was for a sole arbitrator for an arbitration  
18 under the Rules of the CIArb Business Arbitration Scheme, in accordance with Clause 10(4), as  
19 varied.

20           20.     Arbitrator Ian Ridd ("the Arbitrator") was appointed on February 23, 2021. See,  
21 Decl. in Support, Exhibit 9.

1           21.     The arbitration was conducted under the CIArb Business Arbitration Scheme  
2 Rules 2019 and under the Arbitration Act 1996. See, Decl. in Support, Exhibits 10 and 11.

3           22.     The Arbitrator concluded that Prodigy Financial Limited and Martins had entered  
4 into a valid loan Agreement and that Prodigy Financial Limited had disbursed the in accordance  
5 with the terms established in the Prodigy-Martins Agreement. See, Decl. in Support, Exhibit 1,  
6 paragraph 26.

7           23.     The Arbitrator further concluded that Prodigy Financial Limited validity assigned  
8 its rights in the Prodigy-Martins Agreement to Petitioner and that Petitioner provided proper  
9 notice to Martins of said assignment. See, Decl. in Support, Exhibit 1, paragraph 26.

10           24.     The Arbitrator further concluded that Petitioner legally made variations to the  
11 Prodigy-Martins Agreement and that Petitioner provided proper notice to Martins of said  
12 variations. See, Decl. in Support, Exhibit 1, paragraph 26.

13           25.     Finally, the Arbitrator concluded that Martins failed to make the required payment  
14 in January 2019, that Petitioner took steps to notify Martins of the default through various  
15 Notices, that Petitioner was entitled to terminate the loan amount and validly did so through its  
16 written notice to Martins. See, Decl. in Support, Exhibit 1, paragraph 26.

17           26.     A Final Award in favor of Petitioner was issued by the Arbitrator on May 19,  
18 2021 in Prodigy Finance CM2017-1 DAC v. Penha Cristina Braga Martins, Chartered Institute  
19 of Arbitrators, cause number PF10. See, Decl. in Support, Exhibit 1 pursuant to which the  
20 Arbitrator awarded to Petitioner a principal amount of \$124,770.48, plus pre-judgment interest  
21 in the amount of \$15,613.02 and continuing post-judgment interest of \$29.91 per diem. See, Decl.  
22  
23  
24  
25

1 in Support, Exhibit 1, “Award” Section. The Arbitrator also ordered Martins to pay for the  
2 arbitration proceedings.

3 27. On May 19, 2021, the Arbitrator sent the Final Award to all the parties of the  
4 Dispute.

5 28. Martins failed to make any payment on the May 19, 2021, Arbitration Award.

6 29. Accordingly and pursuant to 9 U.S.C. §207, Petitioner is entitled to have the Final  
7 Award confirmed by this Court.

8 WHEREFORE, Petitioner respectfully requests that, pursuant to Article III of the New  
9 York Convention, 9 U.S.C. §207, this Court:

10 1. Enter an order confirming the Award against Martins;

11 2. Enter judgment against Martins in an amount equal to the full amount of the  
12 Final Award, \$140,383.50, plus:

13 i. post-Award interest at the daily rate of \$29.91 from the date of the Final  
14 Award up to the date of payment pursuant to Arbitration Award;

15 ii. post judgment interest pursuant to 28 U.S.C. § 1961,

16 iii. Petitioner’s fees and costs incurred in this proceeding and

17 iv. costs for the arbitration in the sum of \$1410.80 (£1,000 at £1 GBP =  
18 \$1.4108 on May 19, 2021) plus interest at the rate of 8% per annum from the date of the Final  
19 Award up to the date of payment;

20 3. Grant such other relief as the Court may deem just and proper.

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22 //

1 Signed at Redmond, Washington on this 29th day of November, 2021.

2 Wong Fleming

3  
4 /s/Noel Yumo

Noel Yumo

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